(29,821)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 152

FULLERTON-KRUEGER LUMBER COMPANY, PLAINTIFF IN ERROR,

vs.

NORTHERN PACIFIC RAILWAY COMPANY AND MINNESOTA AND INTERNATIONAL RAILWAY COMPANY

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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[fol. 1] SUPREME COURT, STATE OF MINNESOTA

CERTIFICATE OF LODGMENT

I, Grace F. Kaercher, clerk of the said court, do hereby certify that there was lodged with me as such clerk on August 1, 1923, in the matter of Fullerton-Krueger Lumber Company, a corporation, versus Northern Pacific Railway Company, and Minnesota and International Railway Company:

1. The original bond of which a copy is herein set forth.

2. Three copies of the Writ of Error, as herein set forth,—one for each defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in St. Paul, Minnesota, this 1st day of Aug., 1923.

Grace F. Kaercher, Clerk Supreme Court of Minnesota.

[fol. 2] SUPREME COURT OF MINNESOTA

FULLERTON-KRUEGER LUMBER COMPANY, a Corporation, Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY and MINNESOTA AND INTERNATIONAL RAILWAY COMPANY, Defendants

PETITION FOR AND ORDER ALLOWING WRIT OF ERROR, ASSIGNMENT OF ERRORS, AND PRAYER

Considering itself aggrieved by the final decision of the Supreme Court in rendering judgment against it in the above entitled case, the plaintiff, respondent, hereby prays a writ of error, from the said decision and judgment, to the U. S. Supreme Court, and an order fixing the amount of a supersedeas bond.

And the said Fullerton-Krueger Lumber Company assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Minnesota erred in deciding that Section 206 (f) of the Transportation Act of 1920, 41 St. 462, does not apply to actions against carriers against which a statute of limitations had run prior to the passage of the act and thereby denied the validity of a statute of the United States.

The said errors are more particularly set forth, as follows:

The Supreme Court of Minnesota erred in holding and deciding—

That the period of federal control of the properties of a common carrier should be computed as a part of the period within which an

action might be maintained by a shipper against such carrier to [fol. 3] recover the amount of overcharges for transporting goods in intra state commerce, unlawfully demanded and collected by the carrier prior to federal control if the state statute of limitations on the remedy had run prior to the enactment of the Transportation Act of 1920; and that Section 206 (f) of the Transportation Act of 1920, 41 St. 462, did not revive the right of the shipper to maintain an action for said wrong, after the remedy had been barred by the state statute of limitations.

For which errors, the plaintiff, respondent, Fullerton-Krueger Lumber Company, prays that the said judgment of the Supreme Court of the State of Minnesota, dated June 28th, 1923, be reversed and a judgment rendered in favor of the Fullerton-Krueger Lumber Company, plaintiff, and for costs.

P. L. Solether, Attorney for Fullerton-Krueger Lumber Company. 1106-11 Exchange, Minneapolis, Minnesota.

STATE OF MINNESOTA, ss:

SUPREME COURT

Let the writ of error issue upon the execution of a bond by the Fullerton-Krueger Lumber Company to the Northern Pacific Railway Company, and Minnesota and International Railway Company, in the sum of $500; such bond when approved to act as a supersedeas.

Dated August 1st, 1923.

Calvin L. Brown, Chief Justice Supreme Court of Minnesota.

[fols. 4-5½] [Title omitted]

SUPERSEDEAS BOND ON WRIT OF ERROR FOR $500—Approved and filed August 1, 1923; omitted in printing

[File endorsement omitted.]

[fol. 6] WRIT OF ERROR—Filed August 1, 1923

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Minnesota Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Minnesota, before you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between Fullerton-Krueger Lumber Company, a corporation, respondent, and Northern Pacific Railway Company and Min-

nesota and International Railway Company, appellants, wherein was drawn in question the validity of a statute of United States and the decision was against its validity a manifest error hath happened to the great damage of the said respondent as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William Howard Taft, Chief Justice of the United States, the 1st day of August, in the year of our Lord One Thousand Nine Hundred Twenty-three.

Joel M. Dickey, Clerk of the United States District Court for the District of Minnesota, by Margaret L. Mullane, Deputy Clerk.

Writ allowed August 1st, 1923. Calvin L. Brown, Chief Justice.

[File endorsement omitted.]

[fol. 7] CITATION—In usual form, showing service on Charles W. Bunn; filed August 1, 1923; omitted in printing

[File endorsement omitted.]

[fol. 8] [Title omitted]

[fols. 9 & 10] [Index omitted]

[fol. 11] STATE OF MINNESOTA,
County of Hennepin:

DISTRICT COURT, 4TH JUDICIAL DISTRICT

[Title omitted]

COMPLAINT—Filed April 6, 1921

Plaintiff complains of defendants and alleges:

1. That during the times herein mentioned, defendants were common connecting carriers, operating a continuous line of railway from and between Northome, Gemmel, Gloquet, Duluth, Minneap-

olis, St. Paul, and Minnesota Transfer, all stations within the State of Minnesota.

[fol. 12] 2. That between September 1st, 1912, and January 1st, 1914, defendants transported from Gemmel, Minnesota, to Cloquet, Minnesota; Duluth, Minnesota; Minneapolis, Minnesota; St. Paul, Minnesota, and Minnesota Transfer, Minnesota, as hereinafter more specially alleged, a large number of carload lots of lumber, the property of plaintiff.

3. That hereto annexed, and hereby made a part hereof, is a schedule of eight parallel columns marked "Exhibit A," in which is indicated, reading from left to right; in column 1, the date of each of said shipments; in column 2, the station to which each of said shipments was transported; in columns 3 and 3-A, the car number and initials of each car in which said shipments were made; in column 4, the weight, in pounds of each of said shipments; in column 5, the amount of freight charged and collected by defendants and paid by plaintiff for each of said shipments; in column 6, the date of payment of said freight charges; and in column 7, the amount of over-charge of each of said shipments.

4. That defendants charged and received from the plaintiff for said transportation, the sums of money set out in column 5 of said Exhibit "A"; that the sums so received, and each of them were unlawful and excessive, and in violation of the Laws of Minnesota 1905, Section 3017 (General Statutes of Minnesota 1913, Section 4347), and constitute the charging and receiving of a greater compensation per ton per mile for the contemporaneous transportation of [fols. 13-24] the same class of freight for a longer than for a shorter distance, to-wit: From Northome, Minnesota, over the same line in the same general direction, to plaintiff's damage, on each of said shipments, in the sums indicated in column 7 of Exhibit "A." aggregating the sum of Eight Hundred Seventy-one and 96/100 ($871.96) Dollars.

5. That the entire Railway Systems of defendants' within the United States were under Federal Control from December 28th, 1917, to March 1st, 1920, under the powers conferred upon the President of the United States by Congress by act approved August 29th, 1916, relating to appropriations for the support of the army for the fiscal year ending June 30th, 1917, and for other purposes, the same being Chapter 418, 39 Federal Statutes 645, and by proclamation of the President of the United States issued pursuant to said Act of Congress, on December 26th, 1917.

Wherefore, plaintiff demands judgment against defendants in the sum of Eight Hundred Seventy-one and 96/100 ($871.96) Dollars, with interest thereon according to law, together with the costs and disbursements of this action.

Drake, Solether & Evans, Attorneys for Plaintiff. 1106-11
Lumber Exchange, Minneapolis, Minnesota.

[fol. 25] [File endorsement omitted.]

[fol. 26] IN DISTRICT COURT OF HENNEPIN COUNTY

(Title of Cause)

ANSWER—Filed October 24, 1922

The defendants for their joint and several answer to the complaint:

Admit that at the time mentioned in the complaint these defendants were common carriers and that the stations named in the complaint, Northome and Gemmel, Minnesota, were stations on the line of railroad of the Minnesota and International Railway Company, and Cloquet, Duluth, Minneapolis, St. Paul and Minnesota Transfer were stations on the line of railroad of the Northern Pacific Railway Company.

Deny that they have any knowledge or information sufficient to form a belief as to whether any of the shipments referred to in the complaint were the property of the plaintiff.

Deny that they have any knowledge or information sufficient to form a belief as to whether plaintiff paid or bore any of the freight charges mentioned in the complaint and deny that they have any knowledge or information sufficient to form a belief as to whether said plaintiff lawfully is entitled to any overcharge, if there was any overcharge, on any of the shipments mentioned in the complaint.

Allege that the cause of action set forth in the complaint did not accrue within six years before the commencement of this action.

Admit that the operating properties of these defendants were under Federal control.

[fol. 27-30] Except as herein specifically admitted or as denied upon information and belief these defendants deny each and every allegation of the complaint.

Wherefore, defendants pray that plaintiff take nothing by this action and for their costs and disbursements herein.

D. F. Lyons and, D. R. Frost, Attorneys for Defendants. 1018 Northern Pacific Ry. Bldg., Saint Paul, Minnesota.

[File endorsement omitted.]

[fol. 31] DISTRICT COURT OF HENNEPIN COUNTY

(Title of Cause)

FINDINGS—Filed November 23, 1922

The above entitled action came duly on before the undersigned, one of the judges of said court, for trial without a jury, on the 24th day of October, 1922. Drake, Solether, Day & Evans appeared for plaintiff, and D. F. Lyons and D. R. Frost appeared for defendants.

Pursuant to a stipulation of the parties, the cause was submitted upon an agreed statement of fact and conditional acknowledgment of liability, as follows:

I

That this action was commenced January 24th, 1921.

II

That, for the purpose of this action, only, the defendants admit that plaintiff is entitled to recover from defendants the principal sum of Seven Hundred Eighty-two and 21/100 ($782.21) Dollars on account of freight charges paid by plaintiff on the shipments of lumber listed in Exhibit "A" of the complaint, which payments were made subsequent to November 21, 1912, as shown by said Exhibit "A," provided it be decided in this action that Section 206 (f) of the [fol. 32] Federal Transportation Act of 1920 is valid to extend the six-year statute of limitations of the State of Minnesota. If it be decided that Section 206 (f) is valid in respect to the six-year statute of limitations, then the findings and order for judgment shall be for plaintiff in the principal sum of Seven Hundred and Eighty-two and 21/100 ($782.21) Dollars with interest and costs. If it be decided that said Section 206 (f) is not valid to extend said six-year statute of limitations, then judgment shall be for defendants.

III

That proper claims for the alleged overcharges were filed with the defendants on December 8, 1915, and if Chapter 308 of the Minnesota Session Laws of 1911, being Sections 4313, 4314 and 4315 of the Minnesota 1913 General Statutes, govern in respect to interest, then if the decision is in favor of plaintiff, interest shall be added to the principal sum at the rate of six per cent (6%) per annum from said December 8, 1915; if it be found that the law is otherwise in respect to interest, and that findings of fact and the order for judgment should be for the plaintiff, then interest shall be computed from the time said freight charges were paid, as alleged in the complaint.

IV

That the Court may take judicial notice of all federal statutes, proclamations of the President, and general orders of the Directors [fol. 33] General of Railroads in connection with the federal control and operation of railroads ending February 29, 1922.

The court being duly advised finds as follows:

CONCLUSIONS OF LAW

1. That Section 206 (f) of the Federal Transportation Act of February 29, 1920 (41 U. S. Stat. 462) is valid to extend the six-year statute of limitations of the State of Minnesota as respects the cause of action set forth in the complaint herein.

2. That Sections 4313, 4314 and 4315, Minnesota G. S. 1913, do not apply to this cause of action as respects interest recoverable herein.

3. That the cause of action set forth in the complaint arises out of a violation of the provisions of Section 4347, G. S. 1913

4. That plaintiff is entitled to judgment against defendants and each of them in the sum of $782.21, with interest at the rate of six per cent per annum on the several sums set forth in column No. 7 of Exhibit A attached to the complaint herein, from the date of the payment thereof, respectively, as set forth in column No. 6 of said Exhibit, which said Exhibit A is hereby made a part of these Findings as though fully set forth herein; also for its costs and disbursements herein.

Let judgment be entered accordingly.

By the Court:

E. F. Waite, Judge.

Dated November 23, 1922.

Stay of 20 days.

[fol. 34] In District Court of Hennepin County

MEMORANDUM

The case is so interesting and I have spent so much time on it that if it were practicable I should be strongly tempted to discuss it at considérable length. While I refrain from this, I wish to indicate at least in a general way the reasons for the conclusions on the main issue at which I have arrived.

The action is for "moneys had and received" as freight charges unlawfully exacted. It is barred by the six years' limitation unless Section 206 (f) of the Transportation Act of 1920 revived and extended the remedy.

That the provision in question was in a sense retroactive there can be no doubt; and I am satisfied that it applies to actions brought in state courts as well as federal, and that it is constitutional and valid notwithstanding its inapplicability to certain classes of actions specifically discussed by counsel in their briefs. The present action is one arising upon common law principles out of a breach of a statutory duty, to which no specific and inherent limitation is attached; and as to such Section 206 (f) has been generally sustained, as I think it ought to be.

I think there are two questions:

1. If Section 206 (f) is interpreted to apply to actions of the last mentioned class already barred at the time of the passage of the act, is it constitutional? If not, it would be idle to consider in this case whether it can be sustained under a different interpretation. The action would fall.

[fol. 35] If so interpreted, it would be constitutional, the question still remains.

2. Whether it ought to be so interpreted in order to give effect to the legislative intent.

I think the first question must be answered in the affirmative. I have followed Campbell v. Holt, 115 U. S. 620, through the federal courts, and can entertain no doubt that the majority opinion is the law of the land. Although there is language in some of the Minnesota decisions that squints in the other direction, our supreme court seems thoroughly committed to the doctrine that there is no vested right in a mere remedy. And even were the question an open one in this state, the settled doctrine of the federal courts ought to govern. Campbell v. Motion Picture Operators' Union, et al., 186 N. W. 781.

2. The second question I must also answer in the affirmative, following the latest decisions in the federal courts. Wenatchee Produce Co. v. G. N. Ry. Co., 271 Fed. Rep., 784; Stanley v. U. S. Railroad Administration, et al., Ib. 794.

I do not think there is anything in the Kannolless case at variance with the above conclusions, though some of the language used, unless read in the light of the facts then before the court, and of Jones v. D. L. & W. Ry. Co., cited with approval, might seem to be susceptible of such an interpretation.

The study of this case leads me to a reflection which has been forced upon me more than once before, that if the terminology of [fol. 36] all the courts should be made uniform, so that in the opinions "cause of action" would always mean the ground of the suit, and "right of action" would always mean the right to sue, some confusion might be avoided.

E. F. W.

[File endorsement omitted.]

IN DISTRICT COURT OF HENNEPIN COUNTY

(Title of Cause)

JUDGMENT AND DECREE—Filed December 19, 1922

The above entitled action came duly on before the above named Court on the 24th day of October, A. D. 1922, a stipulation of the parties being submitted herein. Messrs. Drake, Solether, Ray & Evans, appeared for plaintiff and Messrs. D. F. Lyons and D. R. Frost appeared for defendants; and the Court being fully advised in the premises, did, on the 23rd day of November, A. D. 1922, duly make and file its findings and order for judgment herein.

Now, pursuant to said order and on motion of Messrs. Drake, Solether, Day & Evans, attorneys for plaintiff, it is hereby adjudged and decree-:

1. That Section 206 (f) of the Federal Transportation Act of February 29, 1920 (41 U. S. Stat. 462), is valid to extend the six-year statute of limitations of the State of Minnesota as respects the cause of action set forth in the complaint herein.

[fols. 37 & 38] 2. That Sections 4313, 4314 and 4315, Minnesota G. S. 1913, do not apply to this cause of action as respects interest recoverable herein.

3. That the cause of action set forth in the complaint arises out of a violation of the provisions of Section 4347, G. S. 1913.

That the plaintiff recover of the defendants, and each of them, the sum of eleven hundred twelve and 59/100 dollars, being the amount ordered and interest at the rate of six per cent per annum on the several sums set forth in column No. 7 of Exhibit "A" attached to the complaint herein from the date of the payment thereof, respectively, as set forth in column No. 6 of said exhibit, together with the sum of thirteen and 95/100 dollars, costs and disbursements as taxed and allowed herein, amounting in all to the sum of eleven hundred twenty-six and 54-100 dollars ($1,126.54).

By the Court:

Walter A. Ryberg, Clerk of District Court, by Gordon J. Mangan, Deputy.

[File endorsement omitted.]

[fol. 39] SUPREME COURT OF THE STATE OF MINNESOTA

[Title omitted]

OPINION, Lees, C.—Filed June 1st, 1923

Syllabus

The enactment by Congress of Sec. 206 (f) of the Federal Transportation Act of 1920 did not have the effect of reviving causes of action which had theretofore become barred by the statute of limitations of this state.

Reversed.

Opinion

This is an action by a lumber company to recover freight charges paid in excess of the amount a railroad company might lawfully charge under Sec. 4347, G. S. 1913. The statute of limitations, Sec. 7701, G. S. 1913, was pleaded as a defense. The parties agreed upon the facts and the court adopted their statement of them in the findings. Suit was begun January 24, 1921. Payment of all

of the items of the alleged overcharges was made during the years 1912 and 1913, the date of the last payment being September 16, 1913. Upon this state of facts, no action to recover any of the payments could be maintained after September 16, 1919, unless the period of limitation fixed by the statutes of this state was extended by the enactment of the Federal Transportation Act of 1920. 41 St. 462. The trial court held that it was so extended, gave plaintiff judgment, and defendants have appealed therefrom.

The provision of the Transportation Act upon which the decision of this case turns is Sec. 206 (f) reading as follows:

[fol. 40] "The period of Federal control shall not be computed as a part of the periods of limitation in actions against carriers or in claims for reparation to the Commission for causes of action arising prior to Federal control."

Federal control began on January 1, 1918, and ended on March 1, 1920. Respondent therefore contends that the bar of the statute did not fall until eight years and two months after the cause of action accrued. Appellants meet the contention with the argument that it is not within the power of Congress to extend the period of limitation — in a state statute; that, if Congress has such power, it has not attempted to exercise it in enacting the Transportation Act; and, finally, that the language of the Act forbids the conclusion that it was intended to have a retroactive effect or to revive a right to sue which had become barred by the statute. Whether Congress has power to suspend the operation of a state statute of limitations is a question we need not consider. We may say in passing that Stewart v. Kahn, 11 Wall. 493, and Adgar v. Alston, 15 Wall. 555, when the existence of the power was affirmed, involved a statute enacted to meet the situation created by the Civil war and the consequent interruption of the administration of justice in the courts of the Southern states. It would seem that, even though this legislation had not been enacted, it might have been held that the war stayed the running of the statute for the time because the courts were closed to citizens of the Northern states until after the conflict was over. Hanger v. Abbots, 6 Wall. 532; United States v. Wiley, 11 Wall. 508. The situation when we were at war with Germany was not the same. Neither the war nor federal control of the railroads interrupted or suspended the prosecution of actions and the recovery of judgments against the companies. Kannellos v. G. N. Ry. Co., 151 Minn. 157; M. P. Ry. Co. v. Ault, 256 U. S. 554. Only the Federal Supreme Court can finally determine whether Congress was properly exercising its war-time powers in enacting Sec. 206 (f) and, since the conclusion we have reached may be rested on another ground, we pass to a consideration of the remaining question in the case.

[fol. 41] Assuming that Congress has power to extend the period of limitation fixed by a state statute, the power is not confined to causes of action upon which the statute had not already run. That was

decided in Adger v. Alston, supra, and in Campbell v. Holt, 115 U. S. 620, and is conceded by counsel for appellants, so the vital question to which we now come is this: in enacting the Transportation Act, did Congress intend that it should have a retroactive effect so that a right to sue, if then barred, would be revived or restored?

In Whittier v. Village of Farmington, 115 Minn. 182, the present Chief Justice said of changes in statutes of limitation:

"A particular statute limits the right to commence an action to six years from the time the cause of action accrued. An amendment of that statute extending the time to eight years would not revive a cause of action which became barred a few days prior to the change in the law, though it would operate to extend the time as to all causes of action not barred by the old statute. * * * The general rule is that the legislature has no power to revive a right of action already barred by limitations by retrospective legislation, or otherwise. But, if the power be conceded, the intention to revive should be made clearly to appear by the terms of the statute, and not left to inference."

And again, in the Kannellos case, he said:

"It is clear that the language of the Transportation Act, though confessedly retroactive in operation, is not such as to justify the conclusion that by it Congress intended to revive rights of action barred and not in fact existing at the time of the passage of the Act. * * * No rule of statutory construction with which we are familiar will justify the conclusion of an intent to restore the dead and down right to life and vitality."

Hopkins v. Lincoln Trust Co., 233 N. Y. 213, is to the same effect. Speaking in general terms of the revival of a cause of action once barred by the statute of limitations, the court said:

"Revival is an extreme exercise of legislative power. The will to work it is not deduced from words of doubtful meaning. Uncertainties are resolved against consequences so drastic."

To discover what Congress intended, it is proper to ascertain the boundaries of the field within which it is possible for Sec. 206 (f) to be operative. In the Kannellos case we held that this provision [fol. 42] of the Transportation Act had no application to a cause of action founded on the Federal Employers' Liability Act when the cause of action had become barred by the terms of the latter Act before Sec. 206 (f) was enacted. By a parity of reasoning it can have no application to a cause of action asserted by virtue of the provisions of our own Employers' Liability Act. Chap. 187 G. L. 1915; Seamer v. G. N. Ry. Co., 142 Minn. 376; Herr v. C. M. & St. P. Ry. Co., 191 N. W. 607. It does not apply to a claim for reparation made to the Interstate Commerce Commission. United States v. Interstate Com. Commission, 246 U. S. 638, or to a similar claim made to a state commission. N. P. Ry. Co. v. Dept. of Public Works,

207 Pac. 686. It thus appears that there are relatively few causes of action to which the Act extends, and this suggests the thought that it is unreasonable to suppose that Congress intended to lift the bar of the statute as to them even though it could not be lifted as to the others. The language is general. There is no specific mention of causes of action which became barred during the period of such control. The inference that they are included is not clear and, as already stated, the rule is that doubts and uncertainties are to be resolved against an interpretation of an act which would give it a retroactive effect. Counsel for respondent rely on a number of recent cases in which a retroactive effect was given to Sec. 206 (f). Wenatchee Produce Co. v. G. N. Ry. Co., 271 Fed. 784; Standley v. U. S. Ry. Ad'mn., 271 Fed. 794; Cravens v. Louisville & N. Ry. Co., 242 S. W. 628. They contend that except in cases where title to property has been acquired by the running of the statute of limitations no one has a vested right to make use of the statute as a defense, for the legislature gives the defense and may take it away at pleasure. They point to the fact that since the statute merely extinguishes the remedy for the enforcement of a right of action, leaving the right alive, there was no necessity for a revival of the right provided the bar to the remedy was removed by the Transportation Act. All of [fols. 43 & 44] these considerations have been taken into account but have not persuaded us that the statute must be given a retroactive effect.

Considering the reluctance with which courts attribute to law-making bodies an intention that their enactments should have a retroactive effect; the rule that such an intention must be manifested by clear and unequivoval language; the comparatively narrow limits within which Sec. 206 (f) is operative, and the fact that it enters a field of legislation lying within the sphere of activity of the states, except perhaps in time of war, we hold that the enactment of the section in question did not revive respondent's right to maintain this action after it had been barred by our statute of limitations.

Judgment reversed.

BILL FOR COSTS—Omitted in printing

[fol. 45] STATE OF MINNESOTA:

IN SUPREME COURT

[Title omitted]

STIPULATION RE AMENDMENT OF JUDGMENT—Filed June 22, 1923

It is hereby stipulated by the parties to the above entitled action, through their respective attorneys, that the decision and order for Judgment of the Supreme Court filed June 1, 1923 may be amended

to provide that the judgment of the District Court of Hennepin county be reversed with directions to enter judgment in said District Court for the defendants.

P. L. Solether, Attorney for Plaintiff-Respondent. D. F. Lyons, C. W. Bunn, D. R. Frost.

[File endorsement omitted.]

[fol. 46] Office of Clerk of Supreme Court

St. Paul, Minn., June 22, 1923.

[Title omitted]

ORDER AMENDING JUDGMENT

It is ordered that the order remanding this cause be amended by adding thereto a direction to the Court below to enter judgment for defendants on the merits of the questions involved. It is so ordered.

[fols. 47 & 48] STATE OF MINNESOTA:

SUPREME COURT

[Title omitted]

JUDGMENT—Filed June 22, 1923

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Hennepin, be and the same hereby is in all things Reversed with directions to the Court below to enter judgment for defendant on the merits of the questions involved.

And it is further determined and adjudged that appellants herein, do have and recover of respondent herein the sum and amount of one hundred and twelve dollars, ($112.00) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed June 28th, A. D. 1923.

By the Court.

Attest: Grace F. Kaercher, Clerk.

Statement for Judgment

Statutory costs	$25.00
Printer	72.00
Clerk	10.00
Acknowledgments	.....
Return	5.00
Postage and Express	.....
Filing Mandate	.....
Transcript	.....
Appeal Bond	.....
Total	$112.00

[File endorsement omitted.]

[fol. 49] STATE OF MINNESOTA, ss:

SUPREME COURT

CLERK'S CERTIFICATE

I, Grace F. Kaercher, clerk of said court, do hereby certify that the foregoing pages, numbered from 1 to 38 inclusive, are a true, full and complete transcript of the record and proceedings, in the case of Fullerton-Krueger Lumber Company, a corporation, Plaintiff, vs. Northern Pacific Railway Company, and Minnesota and International Railway Company, Defendants, and also of the opinion of the Court rendered therein, as the same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 1st day of Aug., 1923.

Grace F. Kaercher, Clerk Supreme Court of Minnesota.
(Seal of the Supreme Court of Minnesota.)

[fol. 50] SUPREME COURT OF MINNESOTA

RETURN TO WRIT OF ERROR

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Minnesota, in the City of St. Paul, this 1st day of Aug., 1923.

Grace F. Kaercher, Clerk Supreme Court of Minnesota.
(Seal of Supreme Court, State of Minnesota.)

[fol. 51] WRIT OF CERTIORARI AND RETURN—Filed November 19, 1923

IN THE SUPREME COURT OF THE STATE OF MINNESOTA

[Title omitted]

Certificate and Return to Writ of Certiorari

I, Grace F. Kaercher, Clerk of the Supreme Court of the State of Minnesota, do hereby certify that the transcript of the record of the proceedings in this court in the above entitled cause, heretofore certified by me for filing in the Supreme Court of the United States, was correct and complete as the same then appeared in this court.

In pursuance of the command of the Writ of Certiorari issued out of the Supreme Court of the United States and directed to the Supreme Court of the State of Minnesota, dated October 26th, 1923, I now hereby certify that on the 13th day of November, 1923, there was filed in my office a stipulation in the above entitled cause in the following words, to-wit:

"IN THE SUPREME COURT OF THE STATE OF MINNESOTA

[Title omitted]

Stipulation

It is hereby stipulated between appellants, Northern Pacific Railway Company, and Minnesota and International Railway Company, and respondent, Fullerton-Krueger Lumber Company, a corporation, that the transcript already filed in the office of the Clerk of the Supreme Court of the United States, with the petition for Writ of Certiorari, be taken as a return to said Writ dated the 26th day of October, 1923.

[fol. 52] "Dated this 1st day of November, 1923.

C. W. Bunn, Attorney for Appellants. John Junell, P. L. Solether, Attorneys for Respondent."

I further certify that the above is a true and correct copy of said stipulation and of the whole thereof.

Witness, my official signature and the seal of the said Supreme Court of the State of Minnesota, at the City of St. Paul, in said State of Minnesota this 13th day of November, 1923.

Grace F. Kaercher, Clerk of the Supreme Court of the State of Minnesota. (Seal of the Supreme Court, State of Minnesota.

[fol. 53] UNITED STATES OF AMERICA, ss:

(Seal of the Supreme Court of the United States.)

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Minnesota, Greeting:

To the Honorable the Judges of the Supreme Court of the State of Minnesota, Greeting:

Being informed that there is now pending before you a suit in which Northern Pacific Railway Company and Minnesota and International Railway Company are appellants, and Fullerton-Krueger Lumber Company is respondent, No. 23401, which suit was removed into the said Supreme Court by virtue of an appeal from the District Court for the County of Hennepin, Fourth Judicial District, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United [fol. 54] States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

[fol. 55] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO PRINTING RECORD No. 511—Filed September 11, 1923

It is stipulated and agreed by and between John Junell, Attorney for plaintiff in error, and C. W. Bunn, attorney for defendants in error, that in order to save expense in the printing of the record herein, the following portions of the record, the same being sufficient to show the errors complained of, shall be printed and no more, to-wit:

Certificate of Lodgment of the Clerk.
Petition for Writ of Error, Assignment of Errors and Prayer.
Order allowing Writ of Error.
Undertaking.
Writ of Error.
Citation.
Complaint, p. 1 of transcript, omitting Exhibit "A" attached to the complaint, beginning at p. 4 of transcript.

Answer, p. 16 of transcript.
Findings, p. 21.
Conclusions of Law, p. 23.
Memorandum of trial Judge, p. 24.
Judgment and Decree p. 26.
Opinion of Supreme Court, p. 29.
Minutes of the court, p. 36.
Judgment and statement of costs in Supreme Court, p. 37.
Authentication of Record.
Return to Writ of Error.

[fol. 56] It is further stipulated and agreed, That if from oversight or omission any necessary part of the record be not thus printed that the plaintiff in error has the right to print or may be required by defendants in error to print any further or additional portions thereof.

Dated this 4th day of September, 1923.

John Junell, Attorney for Plaintiff in Error. C. W. Bunn, Attorney for Defendants in Error.

[File endorsement omitted.]

[fol. 57] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION FOR PRINTING RECORD No. 573—Filed December 6, 1923

It is hereby stipulated by and between petitioner and respondents that the record in case Number 511 October 1923 term being the same case upon Writ of Error, may be taken as the return of the Writ of Certiorari, and that the portions of the record in case Number 511 herefore stipulated to be printed shall be the same portions to be printed of the record in said case Number 573, and that the record so printed in case Number 511 may be taken as the record in case Number 573.

Dated this 27th day of November, 1923.

John Junell, Attorney for Petitioner. Charles W. Bunn, Attorney for Respondents.

[File endorsement omitted.]

Endorsed on cover: File No. 29,821. Minnesota Supreme Court. Term No. 511. Fullerton-Krueger Lumber Company, plaintiff in error, vs. Northern Pacific Railway Company and Minnesota and International Railway Company. Filed August 20th, 1923. File No. 29,821.

Supreme Court of the United States.

OCTOBER TERM, 1924.

No. 152.

FULLERTON-KRAUSER LUMBER COMPANY,
Plaintiff in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY AND MINNESOTA AND INTERNATIONAL RAILWAY COMPANY,
Defendants in Error.

No. 179.

FULLERTON-KRAUSER LUMBER COMPANY,
Petitioner,

vs.

NORTHERN PACIFIC RAILWAY COMPANY AND MINNESOTA AND INTERNATIONAL RAILWAY COMPANY,
Respondents.

BRIEF OF PLAINTIFF IN ERROR-PETITIONER.

JOHN JUNELL,
Attorney for Plaintiff in Error-Petitioner.

F. L. GRANNIS,
Of Counsel on the Brief.

Supreme Court Company, 401-405 Fourth Ave. So., Minneapolis.

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Supreme Court of the United States.

OCTOBER TERM, 1924.

No. 152.

FULLERTON-KRUEGER LUMBER COMPANY,
Plaintiff in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY AND MINNESOTA AND INTERNATIONAL RAILWAY COMPANY,
Defendants in Error.

No. 179.

FULLERTON-KRUEGER LUMBER COMPANY,
Petitioner,

vs.

NORTHERN PACIFIC RAILWAY COMPANY AND MINNESOTA AND INTERNATIONAL RAILWAY COMPANY,
Respondents.

BRIEF OF PLAINTIFF IN ERROR-PETITIONER.

STATEMENT OF CASE.

By agreement of counsel these cases are briefed together as one case, and are to be submitted on the same argument. Except for matters of prac-

tice on review of final decisions of state courts, the issues are identical. Case Number 152 is a writ of error directed to the Supreme Court of Minnesota to review a final judgment. Case Number 179 is a writ of certiorari to review the same judgment.

For convenience, we shall hereafter refer to the Fullerton-Krueger Lumber Company as plaintiff, and to the railroad companies as defendants.

For many years past, defendants have been common carriers operating connecting lines of railway in the state of Minnesota. Between November 25th, 1912, and September 16th, 1913, plaintiff shipped a large number of carload lots of lumber over defendants' railroads between points in Minnesota. Defendants charged and collected from plaintiff for said shipments freight charges in excess of the lawful rates. On January 24th, 1921, plaintiff started suit against defendants, in the District Court for Hennepin county, Minnesota, to recover said overcharges. The facts were stipulated in the trial court, to the effect that the overcharges for said shipments amounted to seven hundred eighty-two and 21/100 ($782.21) dollars, and that plaintiff was entitled to judgment for that amount, with interest, provided it be held as matter of law, that Section 206 (*f*) of the Transportation Act of 1920, 41 Stat. 462, has the effect of eliminating the period of federal control of railroads in computing the Statute of Limitations applicable to this case (Record p. 6). All shipments involved moved in intrastate commerce (Record

p. 5). The freight charges made and collected by defendants were in violation of the law of Minnesota, Section 4347, G. S. 1913 (Record p. 6). That section provides that:

> "No carrier shall charge or receive any greater compensation per ton per mile for the contemporaneous transportation of the same class of freight for a longer than for a shorter distance over the same line in the same general direction, or from the same original point of departure, or to the same point of arrival; but this shall not be construed so as to authorize any carrier to charge as high a rate per ton per mile for a longer as for a shorter distance."

Proper claims for said overcharges were filed with defendants on December 8, 1915 (Record p. 6). The Statute of Limitations, Section 7701, G. S. 1913, was pleaded as a defense. That section provides:

> "Various cases, six years—the following actions shall be commenced within six years:
> 1. Upon a contract or other obligation, express or implied, as to which no other limitation is expressly prescribed."

Plaintiffs pleaded the fact of federal control of defendants' properties from December 28th, 1917, to March 1st, 1920 (Record p. 4). On that state of facts it is apparent that no action to recover any of the overcharges could be maintained after September 16th, 1919, *unless* the period of limitation fixed by the statutes of Minnesota was extended by the Federal Transportation Act of 1920,

41 Stat. 462. Section 206 (f) of that act provides as follows:

> "The period of federal control shall not be computed as a part of the periods of limitation in actions against carriers or in claims for reparation to the commission for causes of action arising prior to federal control."

The trial court held that said Section 206 (f) had the effect of extending the State Statute of Limitations, that the cause was not barred, and judgment was entered for plaintiff for the amount stipulated (Record pp. 8 and 9).

Defendants appealed from the judgment to the Supreme Court of Minnesota, which reversed the judgment below with instructions to enter final judgment for defendants on the merits of the questions involved on the sole ground that said Section 206 (f) did not extend the State Statute of Limitations in a case where the statute had run prior to the enactment of said Section 206 (f) (Record p. 13).

The sole question involved in these cases is whether or not said Section 206 (f) applies to plaintiff's cause of action. The Supreme Court of Minnesota held that congress did not intend the act to apply to claims like plaintiff's, where the State Statute of Limitations matured during the period of federal control, and before the passage of the Transportation Act on February 28th, 1920 (Record pp. 8-12).

SPECIFICATION OF ERRORS.

Error is assigned:

1. That the Supreme Court of Minnesota erred in holding that Section 206 (f) of the Transportation Act of 1920, 41 Stat. 462, did not apply to plaintiff's cause of action.

2. That the Supreme Court of Minnesota erred in holding that the period of federal control of railroads should not be deducted in computing the period of limitation on plaintiff's cause of action prescribed by the laws of Minnesota.

BRIEF OF ARGUMENT.

I.

Congress intended Subdivision 206 (f) to apply to actions against carriers arising prior to federal control, against which State Statutes of Limitations had matured during the period of federal control, because,

(a) Giving the language of the act its usual and ordinary meaning it applies to all actions against carriers for the recovery of money arising prior to federal control. There is no ambiguity. The plain wording of the statute indicates its meaning.

Wenatchee Produce Co. v. Great Northern Ry. Co., 271 Fed. 784.

Standley v. U. S. Railway Adm'n., 271 Fed. 794.

Cravens v. Louisville & N. Ry. Co., 195 Ky. 257, 242 S. W. 628.

N. Y. Central Railway Co. v. Lazarus, 278 Fed. 900.

Jeremy Fuel and Grain Co. v. Denver & Rio Grande Ry., 60 Utah 153, 207 Pac. 155.

Thomas Canning Co. v. Southern Pac. Ry. Co., 219 Mich. 388, 189 N. W. 210.

Bell v. Baker, — Tex. —, 260 S. W. 158 (Apr. 2, 1924).

Caminetti v. United States, 242 U. S. 470.

Lewis v. United States, 92 U. S. 618.

Southern Cotton Co. v. Atlantic Coast Line, 257 Fed. 138.

Rutherford v. Union Pac. Ry. Co., 254 Fed. 880.

(b) The mischief which congress intended to remedy extended to all actions against carriers arising prior to federal control, whether or not the Statute of Limitation had run at the time of the passage of the act.

Stewart v. Kahn, 11 Wall. 493, 505.

(c) If congress had intended the act to apply only to cases against which no Statute of Limitation had run, it could easily have made such a classification. There is nothing in the language used to even suggest such a restricted meaning.

See *Caminetti v. United States, supra.*

Lewis v. United States, supra.

(d) The clause, "or in claims for reparation to the commission," contained in Subdivision 206 (f)

could include only claims against which a limitation had matured during federal control. The clause "actions against carriers" in the same subdivision should be construed to be equally extensive. A phrase repeated in several sections of a statute will bear the same meaning throughout the statute unless a different intention clearly appears. Where the meaning is clear in one instance, the same understanding will be attached to it elsewhere.

See *New York Cent. Ry. v. Lazarus,* 278 Fed. 900, 902.

Wells Fargo & Co. v. Taylor, 254 U. S. 175.

(e) The statute is remedial in nature and should be construed to advance the remedy rather than to suppress it.

Stewart v. Kahn, 11 Wall. 493, 504.

(f) Former acts of congress and of the states on the same subject, general in terms, had been construed by this court to include causes against which a limitation had run prior to the enactment of the law. It is presumed that congress had in mind former legislation, and the interpretation put upon it by the courts.

Stewart v. Kahn, 11 Wall. 493.
Adger v. Alston, 15 Wall. 555.
Campbell v. Holt, 115 U. S. 620.
Mayfield v. Richards, 115 U. S. 137.

(g) So interpreted the results would not be harsh or unjust, but on the contrary they would

be fair and equitable. The effect of a proposed interpretation may be considered in determining the application of the language used if ambiguous or uncertain in meaning.

II.

Construed as applying to causes against which a State Statute of Limitations had matured, the act is constitutional.

Campbell v. Holt, 115 U. S. 620.
Stewart v. Kahn, 11 Wall. 493, 504.
Adger v. Alston, 15 Wall. 555.
Bell v. Baker, supra.
Cravens v. Louisville & N. Ry. Co., supra.
Wenatchee Prod. Co. v. Great Northern Ry. Co., supra.
Standley v. U. S. Ry. Adm., 271 Fed. 794.

III.

The validity of the provisions of Subdivision 206 (f) relating to "actions against carriers" does not depend on the validity of the clause of the same subdivision relating to "claims for reparation to the commission." The two clauses are not dependent on each other.

Berea College v. Kentucky, 211 U. S. 45.
Section 502, Transportation Act of 1920, 41 Stat. L. 499.

IV.

The provisions of Subdivision 206 (f) relating to claims to the commission for reparation are consti-

tutional, as an exercise of war power.

Ball Seligman & Co. v. N. Y., Philadelphia & Norfolk Ry., 73 I. C. C. 657.

Bloedel-Donovan Lumber Mills v. Director General, 68 I. C. C. 95.

Thomas Iron Co. v. Director General, 57 I. C. C. 657.

Warren Const. Co. v. G. N. Steamship Co., No. 13933 (Mimeographed Decisions of I. C. C.).

Arcadia Mills v. Carolina C. & O. Ry., 293 Fed. 639, 645.

San Diego Ry. Co. v. Atchison, etc., Ry., 293 Fed. 139.

War makes many implied exceptions to rights in times of peace. Whatever rights the railroads had to have claims filed within two years were subject to the implied war powers of congress to extend such period of time.

See *Siplyak v. Davis*, 276 Pa. 49, 119 Atl. 745.

Garvin v. Diamond Coal & Coke Co., Pa. —, 123 Atl. 468.

Colorado Fuel Co. v. Industrial Com., 73 Colo. 579, 216 Pac. 706.

Hamilton v. Kentucky Distilleries & W. Co.

Hoffman v. Charlestown Five Cents Bank, 231 Mass. 325, 121 N. E. 15.

Poston v. Ebert, 221 Mich. 361, 191 N. W. 202.

Clark v. Mechanics Am. Natl. Bank, 282 Fed. 589.

Hanger v. Abbot, 6 Wall 532.

Block v. Hirsh, 256 U. S. 135.

Brown Holding Co. v. Feldman, 256 U. S. 170.

Robinson v. Robbins Dry Dock Co., 238 N. Y. 271, 144 N. E. 579.

V.

Error is the proper remedy for reviewing the judgment of the Supreme Court of Minnesota, in this case.

Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282.

ARGUMENT.

I.

Congress intended Subdivision 206 (f) to apply to actions against carriers against which State Statute of Limitations had matured during the period of federal control, because,

(a) Giving the language of the act its usual and ordinary meaning it applies to all actions against carriers for the recovery of money arising prior to federal control. There is no ambiguity. The plain wording of the statute indicates its meaning.

It is plaintiff's position that the meaning of this subdivision is so plain that there is little, if any, occasion for "construction." A reading of Title II of the act, of which this subdivision is a part, having in mind the purpose and object of the act, and the contemporaneous history of the country relative to the subject of the act, and the evils

intended to be remedied, we contend, is all that is necessary in this case to discover the intention of congress. Concerning the "construction" of the plain language of a legislative act this court said, in *Caminetti v. United States*, 242 U. S. 470:

> "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms. (Cases cited.)
>
> Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion. * * *
>
> Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense and with the meaning commonly attached to them."

In the Caminetti case, petitioners argued that an act of congress against transportation for "immoral purposes" was intended to apply only to transportation for "commercial immoral purposes" and not for mere private "immoral purposes." The arguments in that case made to induce the court to give a limited application to the plain words of the act are analogous to the efforts which the railroads have made for a limited application of this act. The answer to those arguments made by the opinion in that case are, we believe, the answers which should be made in this case.

Title II of the Transportation Act of 1920 deals directly with federal control of railroads. Its purpose was to terminate federal control, and to provide ways and means of adjusting all the complicated matters arising out of federal control. Sections 202-205, 207-210, dealt primarily with the adjustment of rights between the railroad companies and the government. Section 206, a, b, c, d and e dealt with the adjustment of rights between the public and the government, and Subdivision 206 (f) covered the matter of rights, between the public and the railroad companies, affected by federal control.

In the public interest, congress gave the railroad companies full and fair compensation for every possible loss and inconvenience suffered by them which could be the subject of measurement. Congress also provided adequate means for full and fair compensation to shippers, passengers and employees who had claims arising out of government operation of railroads. Congress was further of opinion that persons having claims against the carriers at the beginning of federal control should have an extended time for enforcing their claims. Congress then had freshly in mind the conditions surrounding federal control, and all the circumstances which attended it. It was of opinion that such claims were affected by the fact of federal control, in such a manner that, as a matter of justice, between the claimants and the railroads, the claimants should have as much time for enforcing their legal rights at the termination of

federal control as they had at the beginning of federal control. We say that this was what congress believed, because that was what congress did in plain language.

It certainly is not incumbent upon us, or upon the court, to seek out the reasons for this action by congress, or even to attempt to justify it. It is enough if congress has acted, and if it has acted within its constitutional powers. But we cannot refrain from calling attention to a few reasons which have occurred to us which probably prompted this action by congress.

In the first place, the mere fact of government operation and possession of railroads, coming suddenly, without warning, in the midst of the World War, was so novel, so unprecedented and so stupendous that the whole country was stunned. None knew the legal effect of the situation. We had no precedents for our guide. The public had great difficulty in obtaining authentic information as to what had been done by congress, by the president, and by the director general. Even the legal profession could not get prompt, authentic information. The director general issued bulletin upon bulletin, general orders followed general orders, presidential proclamations followed upon acts of congress, all in rapid succession. These acts, proclamations and general orders touched and affected in some degree, existing causes of action against the railroad companies.

The proclamation of the President of Dec. 26, 1917, contained the following provision relative to

suits against the railroads:

> "Except with the prior written assent of the said director, no attachment by mesne process or on execution shall be levied on or against any of the property used by any of said transportation systems in the conduct of their business as common carriers; but suits may be brought by and against said carriers and judgments rendered as hitherto *until and except so far as said director may, by general or special orders, otherwise determine.*" (Italics supplied.)

Section 10 of the Federal Control Act of March 21, 1918, 40 Stat. at L. 451 contained this provision:

> "That carriers while under federal control shall be subject to all laws and liabilities as common carriers, whether arising under state or federal laws or at common law, *except insofar as may be inconsistent with the provisions of this act or any other act applicable to such federal control or with any order of the president.*" (Italics supplied.)

General orders 18 and 18-a issued by the director general, limited the venue of actions against the companies for causes arising prior to federal control, to the district where the cause arose or where plaintiff resided.

Other regulations of the director general required the managing officials "to sever their relations with the particular companies and to become exclusive representatives of the United States Railroad Administration," U. S. R. R. Adm. Bulletin No. 4, pages 113 114, 313. "The railway em-

ployees were under its direction, and were in no way controlled by their former employers." See opinion of Justice Brandeis in *Missouri Pac. Ry. Co. v. Ault*, 256 U. S. 554, 557, 558.

The government, as a war measure, assumed the right to regulate actions against the railroad companies for causes arising prior to federal control, and actions were *permitted*, as a concession by the government, "until and except so far as the director * * * may otherwise determine." This situation was a source of great annoyance and difficulty to persons desiring to sue the carriers. The uncertainty of proper procedure was a source of added expense to those contemplating legal proceeding. Any action which might interfere with the government operation, in the slightest degree, was frowned upon by public officials and public sentiment. At the same time a million men left their homes and entered the army. Other millions entered new war industries, away from their homes. Business was on a new and accelerated basis. The mind of the public was absorbed by the war, and by the new situations created by the demands of the war. Many persons who would have pushed their claims against carriers in normal times were prevented from doing so by the unusual demands of the times, absence from business, absence of witness, the general inconvenience of the situation and uncertainties caused by the war and federal control.

Those circumstances alone might have prompted

this action by congress, in extending the time for enforcing claims against the carriers by stopping the running of statutes of limitation for the period of federal control. But there were other reasons.

Practically all railroad companies are corporations, operating in many states. As to all those states, excepting possibly one, (the state granting the corporate charter) they are foreign corporations. The method of serving process on them was prescribed by each state and usually consisted of some form of attachment, or of service on an agent within the state. Ticket agents and freight agents were the ones upon whom service generally was made. Beginning with federal control all those agents ceased to be agents of the railroad companies. They became the exclusive agents of the government. Service of process could not be made on such agents. *Southern Cotton Co. v. Atlantic Coast Line,* 257 Fed 138; *Rutherford v. Union Pacific Ry Co.,* 254 Fed. 880. Process could not be served through the channels of attachment. That was expressly prohibited by the President's proclamation of Dec. 26, 1917, and the Federal Control Act of March 21, 1918. Service could not be had in the state where the cause arose, or where plaintiff resided when the cause arose because the foreign corporation had no officers, directors or agents resident within the state. Service could not be had outside of such state or states because of the provisions of general orders 18 and 18-a issued by the director general.

Even at this date when the various statutes, or-

ders and proclamations have been clarified and construed by judicial decisions, it is apparent that many persons who had claims against carriers were not only interfered with, hampered, and discouraged in their prosecution, but the law was such that in many cases it was *impossible* to secure service of process on defendants. See *Moore & Co. v. Atchison, Topeka, etc. Co.*, 106 Misc. 58, 174 N. Y. Supp. 60.

In all probability many other reasons and circumstances will occur to the court, or occurred to congress, why Subdivision 206 (f) was a very "beneficent exercise of the war powers of congress." It would have been highly unjust to permit the railroads to receive full compensation for their losses, and guarantees against certain anticipated losses on the one hand, and to permit them to unjustly enrich themselves by the unfortunate situation in which their creditors found themselves during the period of federal control. These reasons probably prompted congress to enact Subdivision 206 (f).

Our first point is that the language of Subdivision 206 (f), read in its context having in mind the contemporary history of the times and the evils intended to be remedied, is so clear and plain that there is no occasion for "construction." It means that:

> "The period of federal control shall not be computed as part of the periods of limitation in actions against carriers * * * for causes of action arising prior to federal control."

This language is general, and should be given a general application. The words "causes of action" are the words which are involved in the construction of the statute in this case. It includes causes of action for personal injuries, loss and damage, delays in transit, freight overcharges, and all causes of action for the recovery of money which are affected by periods of limitation. The act affects directly the *periods of limitation* insofar as they affect causes of action arising prior to federal control. The act affects all such causes of action, without distinction as to when the period of limitation might otherwise accrue, provided only that it might accrue after the beginning of federal control. As to all such causes the running of the period of limitation is stopped during the period of federal control. The case at bar is such a case.

In *Lewis v. United States,* 92 U. S. 618 this court applied these principles of "construction," to a case where congress had used general terms which were clear and plain. It provided that in certain bankruptcy proceedings "the debt due to the United States shall be first satisfied." An attempt was made to secure a limited application of the act. In the opinion Justice Swayne said, in part:

> "It may be well to pause here and carefully analyze this section, and consider the particulars of the category it defines, so far as its provisions apply to the case in hand.
>
> Those affected are persons 'indebted to the United States.'
>
> This language is general, and is without qualification.

The form of the indebtedness is immaterial. It may be by simple contract, specialty, judgment, decree, or otherwise by record. The debt may be legal or equitable, and have been incurred in this country or abroad. A valid indebtedness is as effectual in one form as another. No discrimination is made by the statute.

The debtors may be joint or several, and principals or sureties.

Here, again, no distinction is made by the statute. All are included, *Beaston v. Bk.*, 12 Pet. 134, *U. S. v. Fisher*, 2 Cranch, 358.

There must be bankruptcy or else insolvency, as the latter is defined by the statute and the authorities upon the subject.

As bankruptcy exists here, we need not look beyond that point in this case. Congress had power to pass the act. *Fisher v. Blight*, 2 Cranch, 396.

Where the language of a statute is transparent, and its meaning clear, there is no room for the office of construction. There should be no construction where there is nothing to construe. *U. S. v. Wiltberger*, 5 Wheat 95; *Cherokee Tobacco*, 11 Wall. 621, 20 L. Ed. 229.

That the facts disclosed in the record bring the case within the plain terms and meaning of the section in question, seems to us, viewing the subject from our standpoint, almost too clear to admit of serious controversy. Affirmative discussion, under such circumstances, is not unlike argument in support of a self-evident truth. The logic may mislead or confuse. It cannot strengthen the pre-existing conviction. *Cherokee Tobacco, supra.*"

We feel, in this case, that an attempt to state reasons outside of the plain language of the act,

why it should be construed to include our case, "is like finding reasons in support of self evident truth." Nevertheless, we shall give additional reasons why the act should be construed to apply to this case.

I (b).

The mischief which congress intended to remedy extended to all actions against carriers arising prior to federal control, whether or not the Statute of Limitation had run at the time of the passage of the act.

The purpose of Subdivision 206 (f) was to relieve persons having claims against carriers, arising prior to federal control, from the restrictions on actions specifically imposed by the laws and regulations relative to federal control, as well as the restrictions arising out of the confusion and uncertainty of legal rights existing, especially, during the earlier part of federal contrpl. To accomplish that purpose it was more important to grant the relief to those causes against which the bar had fallen during federal control, than to those causes which were not then barred. It was more important to grant the relief to those who then had no remedy, than it was to merely grant additional time of two years and two months to those who still had a remedy. Such an extension was of little value to those who had a remedy. Congress would scarcely have considered their situation of sufficient importance to require special legislation. But the

cases of those who had lost their remedies as a result of federal control, in the manner more fully stated above, made some kind of legislation imperative, if full justice was to be done to them. We assert that these considerations are affirmative reasons for believing that congress intended the subdivision to cover cases barred at the time of its enactment.

I (c).

If congress had intended the act to apply only to cases against which no statute of limitation had run, it could easily have made such a classification. There is nothing in the language used to even suggest such a restricted meaning.

If there were any words in the subdivision to suggest that congress did not intend it to apply to causes then barred, there would be some occasion for construing the general words of the act. But there are no other portions of the act which require a limited application of this subdivision, in order to harmonize all provisions of the act. There being no language to suggest a limited application, the act ought to be given effect according to the usual and ordinary meaning of the language chosen by congress. See *Caminetti v. United States, supra* and *Lewis v. United States, supra.*

I (d).

The clause "or in claims for reparation to the commission," contained in the subdivision could include only claims against which a limitation had matured during federal control. The clause "actions against carriers" should be construed to be equally extensive.

In Subdivision 206 (f) congress was giving a special remedy to persons having claims against carriers at the beginning of federal control. Those claims were of two general classes. (1) Those which must be filed with the commission before suit could be brought, and (2), those on which suit could be maintained without being so filed. Claims for reparation had to be filed with the commission within two years after the cause of action arose. Since the period of federal control was two years and two months, it is obvious that all claims for reparation arising prior to federal control were barred at the time the act was passed by congress. Therefore, that portion of the subdivision dealing with claims for reparation could apply only to causes barred when the act went into effect. A phrase repeated in several sections of a statute will bear the same meaning throughout the statute. Where the meaning is clear in one instance the same understanding will be given to it elsewhere. See *N. Y. Cent. Ry. Co. v. Lazarus*, 278 Fed. 900, 902; *Wells Fargo & Co. v. Taylor*, 254 U. S. 175. This is affirmative reason for believing that con-

gress intended the other portion of the subdivision dealing with actions against carriers to apply to causes theretofore barred.

I (e).

The statute is remedial in nature and should be construed to advance the remedy rather than to suppress it.

If the language were ambiguous, or uncertain in meaning, still it should be construed liberally to advance the remedy. The judgment of the Minnesota Supreme Court reversed the rule as to liberal construction of remedial statutes. They suppressed the remedy. They even went further. They read into the act the following words "except causes now barred." They inferred doubts where none should have been inferred, then resolved the doubts against us. Remedial statutes should have doubts (if any) resolved so as to advance the remedy and to suppress the evil. See *Stewart v. Kahn*, 11 Wall. 493, quoted below.

I (f).

Former acts of congress and of the states on the same subject, general in terms, had been construed by this court to include causes against which a limitation had run prior to the enactment of the Transportation Act. It is presumed that congress had in mind former legislation, and the interpretation put upon it by the courts.

In 1864 congress passed an act intended to stop

the running of statutes of limitation for the period of the war. 13 Stat. 123. The act was so worded that a literal construction of the language would have made it applicable only to the time running after its enactment, and not to time which had run prior to its enactment. That statute was construed in *Stewart v. Kahn,* 11 Wall. 493, where the relevant portions of the statute are quoted, as follows:

> "Wherever, after such action—civil or criminal—shall have accrued, and such persons cannot, by reason of such resistance of the laws, or such interruption of judicial proceedings, be arrested or served with process for the commencement of the action, the time during which such person shall be beyond the reach of legal process shall not be deemed or taken as any part of the time limited by law for the commencement of such action."

Construing that section the court said:

> "A severe and literal construction of the language employed might conduct us to the conclusion, as has been insisted in another case before us, that this clause was intended to be made wholly prospective as to the period to be deducted, *and that it has no application where the action was barred at the time of its passage. Such, we are satisfied, was not the intention of congress.* * * * (Italics supplied.)
>
> The statute is a remedial one and should be construed liberally to carry out the wise and salutary purposes of its enactment. The construction contended for would deny all relief to the inhabitants of the loyal states having causes of action against parties in the rebel states if the prescription had matured when

the statute took effect, although the occlusion of the courts there to such parties might have been complete from the beginning of the war down to that time. The same remarks would apply to crimes of every grade; if the offenders were called to account under like circumstances. It is not to be supposed that congress intended such results. There is no prohibition in the constitution against retrospective legislation of this character. We are of the opinion that the meaning of the statute is, that the time which elapsed while the plaintiff could not prosecute his suit, by reason of the rebellion, whether before or after the passage of the act, is to be deducted. Considering the evils which existed, the remedy prescribed, the objects to be accomplished, and the considerations by which the law makers were governed —lights which every court must hold up for its guidance when seeking the meaning of a statute which requires construction—we cannot doubt the soundness of the conclusion at which we have arrived."

It will be noticed that these two statutes are similar in purpose. The statute of 1864 was construed liberally to include causes barred before its enactment, even though a literal reading of its language would not have necessitated such construction. Assuming that congress was familiar with that judicial history on the subject, it is additional reason for believing that congress supposed that the courts would not take the clear and positive words which it used, and apply them to exclude causes barred at the time of its passage, but that they would view the subject as this court did in *Stewart v. Kahn, supra,* and that the act would

be construed to advance the remedy, if, indeed any *construction* should become necessary.

In *Adger v. Alston,* 15 Wall. 555 ,the court assumed that the act of 1864, *supra,* was applicable to a cause barred at the time of its enactment, but reversed the decision of the court below on the ground that the period to be deducted had been improperly computed.

It is also proper to assume that congress was familiar with the law of the land, as declared in *Campbell v. Holt,* 115 U. S. 620, where it was held that a state law stopping the running of a statute of limitation after the bar had accrued and which operated only on remedies, did not violate any constitutional rights of defendants. In that case a statute in general terms, stopping the running of limitations on actions was applied to a cause barred at the time of the taking effect of the law, a new constitution for the state of Texas. The material portion of that law is quoted in the opinion as follows:

> "The Statutes of Limitations of civil suits were suspended by the so-called Act of Secession of the 28th of January, 1861, and shall be considered as suspended within this state, until the acceptance of this constitution by the United States congress."

That language was construed, as a matter of course, to apply to causes otherwise barred at the time of its enactment.

II.

Construed as applying to causes against which a State Statute of Limitations had matured, the act is constitutional.

The entire portion of Title II of the Transportation Act of 1920 is an exercise of war power. The railroads were taken over and operated under the war power clause. The legislation for returning the railroad properties to their owners and for remedying the effects of federal control are within the war powers of congress. Peace had not yet been declared. The act of 1864 stopping the running of Statutes of Limitation was held constitutional as an exercise of war power. The opinion in *Stewart v. Kahn, supra,* fully answers any doubts about the constitutionality of legislation of this kind. The law as announced in *Campbell v. Holt, supra,* also sustains the constitutionality of retroactive legislation, of this kind. As a war measure, congress had assumed jurisdiction over causes of action against carriers, arising prior to federal control. Congress was now terminating that jurisdiction. If it had power to require rates to be continued in force for six months thereafter, and to suspend the jurisdiction of the states over such matters, as a war power, it certainly could legislate for the future enforcement of claims arising prior to federal control. See *Wasatch Coal Co. v. Baldwin* (1922), 60 Utah 397, 208 Pac. 1109, and *Public Service Comm. v. New York Central Rail-*

road Co., 230 N. Y. 149, 129 N. E. 455, 14 A. L. R. 449. Those cases hold that Section 208 (a) of the Transportation Act of 1920, 41 Stat. at L. 464 is constitutional. Congress had jurisdiction over causes arising prior to federal control and might legislate for the manner of their enforcement.

III.

The validity of the provisions of Subdivision 206 (f) relating to "actions against carriers" does not depend on the validity of the clause of the same subdivision relating to "claims for reparation to the commission."

The subdivision covers two distinct classes of claims (1) those for reparation to the commission and (2) those suable in courts. The clauses covering the two subjects are severable and the subject matter is severable. Neither clause is conditioned on the operation of the other. The words "or in claims for reparation to the commission" could be eliminated from the subdivision and the remainder would still cover "actions against carriers." The subdivision would then read,

> "The period of federal control shall not be computed as a part of the periods of limitation in actions against carriers * * * for causes of action arising prior to federal control."

These principles were applied by this court in *Berea College v. Kentucky*, 211 U. S. 45, where the Kentucky legislature made it unlawful "for any

person, corporation or association to maintain or operate any college, school, or institution where persons of the white and negro races are both received as pupils for instruction." It was held that the statute might be invalid as applied to individuals, and still operate as applied to corporations, and that the invalidity, of such part in that case would not affect the validity of the remainder. The court said:

> "The statute is clearly separable, and may be valid as to one class while invalid as to another. Even if it were conceded that its assertion of power over individuals cannot be sustained, still it must be upheld so far as it restrains corporations."
>
> "The point is not whether the parts are contained in the same section, for the distribution into sections is purely artificial; but whether they are essentially and inseparably connected in substance—whether the provisions are so interdependent that one cannot operate without the other."

This conclusion is further supported by the provision of Section 502 of the Transportation Act of 1920, 41 Stat. L. 499 which provides:

> "Sec. 502. That if any clause, sentence, paragraph, or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid such judgment shall not affect, impair, or invalidate the remainder of the act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment has been rendered."

We assert, therefore, that the validity of the

first part of Subdivision 206 (f) does not depend on the validity of the second part.

IV.

The provisions of Section 206 (f) relating to claims to the commission for reparation are constitutional.

The Minnesota Supreme Court said in its decision in the case at bar that Section 206 (f) "does not apply to a claim for reparation made to the Interstate Commerce Commission." It cited *United States v. Interstate Commerce Commission*, 246 U. S. 638. That case makes no reference to Section 206 (f), it having been decided in 1918. We believe that it was competent for congress as a war measure *to enlarge the jurisdiction of the Interstate Commerce Commission* to include causes arising prior to federal control, without violating any vested right and without impairing the obligation of any contract. Many so-called "rights" are subject to many implied exceptions in times of war. Statutes of limitations are impliedly stopped as against alien enemies. *Hanger v. Abbott*, 6 Wall. 532. Legislatures may pass moratorium acts, which seriously affect remedies for foreclosure of mortgages, cancellation of insurance policies, pending actions, rents, and other matters, which, in a sense, affect vested rights.

See Soldiers and Sailors Civil Relief Act of *Mar. 8, 1918*, 40 Stat. 76.

Hoffman v. Charleston, Five Cents Bank, 231

Mass. 324, 121 N. E. 15.

Morse v. Stober, 233, 123 N. E. 780.

Clark v. Mechanics Am. Natl. Bank, 282 Fed. 589.

Poston v. Ebert, 221 Mich. 361, 191 N. W. 202.

It has been held that rights arising out of a special statute creating an employer's liability, limited by the statute to enforcement within a special time, may be enforced after that period had run, where the claimant was an alien enemy for a part of that time.

Siplyak v. Davis, 276 Pa. 49, 119 Atl. 745.

Colorado Fuel Co. v. Industrial Commission, 73 Colo. 579, 216 Pac. 706.

In *Robinson v. Robins Dry Dock & Repair Co.* (N. Y. Court of App., May 20, 1924), 238 N. Y. 271, 144 N. E. 579, it was held that a state legislature might revive a remedy in an employer's liability case where the remedy had been lost before the passage of the act, and that such a provision did not violate any right under the constitution. The opinion in that case quotes from the opinion of Mr. Justice Holmes, on reargument, in *Danforth v. Groton Water Co.*, 178 Mass. 472, 59 N. E. 1033, 86 Am. St. Rep. 495, in which he made a distinction between "immunities which exist only by reason of slight technical defect" and those "which stand on fundamental grounds." In *Dunbar v. Boston & P. R. R. Corporation*, 181 Mass. 383, 63 N. E. 916 Chief Justice Holmes stated:

"That the constitutional provisions allow a

certain limited degree of latitude in dealing with cases where remedies have been extinguished by lapse of time when the seeming infraction of right is not very great and when justice requires relief. It is unnecessary to go so far as *Campbell v. Holt.*"

Within the principles announced in those cases congress may, when circumstances make it advisable, extend the time within which claims may be filed with the commission, even though Section 16 of the Commerce Act, as amended, has been construed as a limitation on the jurisdiction of the commission.

The Interstate Commerce Commission has given full force and effect to Subdivision 206 (f), in claims for reparation for causes arising prior to federal control.

Thomas Iron Co. v. Director General et al., 57 I. C. C. 657.

Bloedel-Donovan Lumber Mills v. Director General et al., 68 I. C. C. 95.

Ball Seligman & Co. v. N. Y., Philadelphia & Norfolk Ry., 73 I. C. C. 223.

Warren Const. Co. v. G. N. Steamship Co., #13, 933 (mimeographed decisions of I. C. C.).

When the orders of the commission have been sued on in the courts, the validity of the subdivision as applied to claims for reparation has been sustained.

Arcadia Mills v. Carolina C. & O. Ry., 293 Fed. 645.

San Diego Ry. Co. v. Atchison etc. Ry., 293 Fed. 139.

In the *Arcadia Mills case, supra,* the court said, page 645:

> "If it be objected that the limiting statute had run, and the claims in question therefore barred before the Transportation Act was passed, it is sufficient for answer to cite the case of *Campbell v. Holt,* 115 U. S. 620, 6 Sup. Ct. 209, 29 L. Ed. 483, which is directly in point and decisive."

In the *San Diego Ry. Co. case, supra,* the court said, pages 140, 141:

> "It may be admitted that, were a private debtor here concerned, and were the claim one which in its right was destroyed by the lapse of time, the legislative branch of the government would be powerless to revive the debt. But in the legislation here considered, Congress was acting within the powers committed to it in the regulation of commerce. The carriers concerned have no right, separate from the general public interest, to the benefit of the limitation. Public concern is paramount. This is made clear by the Supreme Court of the United States in *Phillips v. Grand Tr. Ry. Co., supra,* wherein it is held that the carrier cannot waive the limitation. * * * And so it would seem a necessary conclusion that when congress determined that the right to have compensation awarded for unreasonable exactions, or other proper damages, might be claimed within two years, excluding the period of federal control, it invaded no vested right, even though the full period of limitation had expired before the act was passed. The revivor affected a cause which had in fact ex-

> isted, and which was satisfied only in the sense that the law, as it stood at the time the claim accrued, considered the two years' limitation as inseparable from the right. As the change would require nothing to be rendered by the carrier other than was its obligation in the first place, and as the limitation was more largely for the public benefit than in the interest of the carrier, the legislation was of a competent kind."

Considering the substance of the matter, the limitation of Section 16 of the Commerce Act, as amended, is a matter of *remedy*, and not a matter of *substantive law*. The act of Congress in restoring a lost remedy for a valid claim, is not, in substance, a taking of property without due process of law. Where war, and federal control was a contributing cause to the loss of remedies, certainly the powers of congress are sufficiently broad to restore such remedies for the public interest. If point III, above is correct, the court need not consider point IV, in this case.

V.

The court need not, in passing on the validity of Subdivision 206 (f) inquire into the motives of congress, nor into the wisdom of the legislation, nor into the necessity for the exercise of the power.

This court announced and applied these principles in its decision in *Hamilton v. Kentucky Distilleries and Warehouse Co.*, 251 U. S. 146. The court cited *Stewart v. Kahn, supra*, to the effect

that the war power includes the power to "remedy the evils which have arisen from its rise and progress," page 161. Mr. Justice Brandeis in the opinion further said, page 161:

> "No principle of our constitutional law is more firmly established than that this court may not, in passing upon the validity of a statute, inquire into the motives of congress (authorities cited). Nor may the court inquire into the wisdom of the legislation (authorities cited). Nor may it pass upon the necessity for the exercise for a power possessed, since the possible abuse of a power is not an argument against its existence (authorities cited).

On page 163 he said that congress was "invested with a wide discretion; and that its action, unless purely arbitrary, must be accepted and given full effect by the courts" and further that "every reasonable intendment must be made in favor" of its validity. "That to congress, in the exercise of its powers, not least the war power upon which the very life of the nation depends, a wide latitude of discretion must be accorded," page 163.

Those principles apply to this case. Congress has exercised its discretion in remedying the mischief caused by federal control and by the war. We are not concerned with the motives of congress, or the wisdom of the legislation, although we have shown that there was just cause for the relief granted by the act.

VI.

Error is the proper remedy for review of the judgment in question.

Mr. Bunn, attorney for defendants has filed a brief on that point in the certiorari proceeding, No. 179 wherein he argues that the case is not one for certiorari, but that a writ of error lies. He cited *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282.

It is plaintiff's judgment that error is the proper remedy, and we adopt the reasoning of Mr. Bunn in his brief on the petition for certiorari.

Respectfully submitted,

JOHN JUNELL,

Attorney for Plaintiff in Error-Petitioner.

P. L. SOLETHER,

Of Counsel on the Brief.

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No. [redacted] 170

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

FULLERTON-KRUEGER LUMBER COMPANY,
Petitioner,

vs.

NORTHERN PACIFIC RAILWAY COMPANY and MINNESOTA AND INTERNATIONAL RAILWAY COMPANY.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

CHARLES W. BUNN,
for Northern Pacific Railway Company and Minnesota and International Railway Company.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

FULLERTON-KRUEGER LUMBER COMPANY,
Petitioner,

vs.

NORTHERN PACIFIC RAILWAY COMPANY and MINNESOTA AND INTERNATIONAL RAILWAY COMPANY.

This case is stated correctly by the petitioner and no doubt is suggested that the judgment of the Supreme Court of Minnesota is sufficiently important to entitle it to review.

It is submitted, however, that the case is not one for certiorari. The petitioner has already sued out and docketed in this court a writ of error from the same judgment, and it is submitted that the case is already here on the writ of error. This question ought to be considered at this stage to save duplication of costs, printing and labor of counsel.

The statute authorizes writ of error "where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity."

It is submitted that this case is described by this language. It is not required that suit should be founded on the Constitution or laws of the United States, or founded on the state statute claimed to be obnoxious to them. It is required only that in the state court, in any way, or at any stage, "there is drawn in question the validity of a statute of," any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

In this case in the state court there was drawn in question the validity of a six-year statute of limitation which was asserted to have no validity as applied to this case, because of a certain provision in the Transportation Act said to nullify the effect of the state statute. The state court sustained the validity of the state statute of limitation against petitioner's contention that the act of Congress overruled the state statute and so applied to the case.

It is submitted that writ of error lies on the authority of *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282.

CHARLES W. BUNN,
for Northern Pacific Railway Company
and Minnesota and International Railway Company.

WM. A. STAA

[Revise]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 152.

FULLERTON-KRUEGER LUMBER COMPANY,
Plaintiff in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY and MINNESOTA AND INTERNATIONAL RAILWAY COMPANY.

BRIEF FOR DEFENDANTS IN ERROR.

CHARLES W. BUNN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 152.

FULLERTON-KRUEGER LUMBER COMPANY,
Plaintiff in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY and MINNESOTA AND INTERNATIONAL RAILWAY COMPANY.

BRIEF FOR DEFENDANTS IN ERROR.

The Fullerton-Krueger Company brought an action in a state court of Minnesota to recover freight charges paid upon shipments wholly within the state in excess of what the Railway Companies, defendants in error, might lawfully charge under Section 4347 G. S. Minnesota 1913. This statute laid down a peculiar long and short haul rule, violation of which was the ground of complaint. The six years state statute of limitation, Section 7701 G. S. 1913, was pleaded as a defense. The facts were agreed upon and there is no question in the case except the statute of limitations. Payment

of all the overcharges was during the years 1912 and 1913, the last payment being September 16, 1913. Suit was begun January 24, 1921, over 7 years and 4 months after the cause of action accrued. The state statute barred the action September 16, 1919. The question is whether Transportation Act, 1920, 41 St. 462, operated to extend this cause of action.

The only material provision of the act is Sec. 206 (f) reading:

> "The period of Federal control shall not be computed as a part of the periods of limitation in actions against carriers or in claims for reparation to the Commission for causes of action arising prior to Federal control."

Federal control began January 1, 1918 and ended March 1, 1920, and the action rests on the contention that this provision of the Transportation Act extended the state statute of limitation, notwithstanding the right of action had been barred befor the Transportation Act was passed.

It appears from the opinion of the Supreme Court of Minnesota (Trans. p. 10) that defendants in error raised in the state court the following contentions; (a) that it was not within the power of Congress to extend the state statute of limitation; (b) that conceding the power, Congress had not attempted to exercise it; (c) and finally that 206 (f) at least cannot be interpreted to revive a right to sue barred before it was passed.

I.

The Supreme Court of Minnesota rested the case on point (c), but we wish to suggest the very doubtful power of Congress to extend this limitation. The action in the first place is one created by a state statute, not one resting on any federal right or on any principle of general law. Therefore the cause of action is one peculiarly within the absolute control of the state. The only reason we have heard advanced, for the provision quoted from the Transportation Act, was the federal control of railways during the great war.

The power of Congress cannot be doubted to make war and to make provisions to minimize the results of war. Its power to regulate commerce among the states is also freely admitted. But neither the war nor the federal control interrupted or suspended the prosecution of actions and the recovery of judgments against carriers. *Missouri Pacific Ry. v. Ault*, 256 U. S. 554, 559, 561; *Kannellos v. Great Northern Ry. Co.*, 151 Minn. 157.

Stewart v. Kahn, 11 Wall. 493, and *Adger v. Alston*, 15 Wall. 555, do not, as we think, decide the question here. The statute passed on in those cases suspended the running of time during which administration of justice in the southern states had been actually suspended by the civil war. The statute therefore had direct relation to the war, lessening its disasters. But it would be very difficult we think to show how or wherein the extension to state statutes of limitation of the clause

quoted from the Transportation Act has the slightest relation to the power of Congress either to make war or to control commerce.

While the contention here made was pressed in the state court, it is suggested here mainly to indicate that the act of Congress ought to receive an interpretation which will avoid the difficulties we have only suggested.

Such an interpretation was given the act of Congress by the Supreme Court of the state.

II.

As a matter of interpretation of the Transportation Act we say:

(a) When it is considered; that limitations on rights founded in state law and pursued in the state courts are matters entirely of state policy, while Congress regulates the limitations applicable to causes of action created by federal law; and that the state legislatures were not suspended by federal control of railways and were able to afford all necessary relief, with respect to limitation of actions, it should be obvious that this act of Congress ought not to be given the quite extraordinary effect of extending limitations in the state courts upon proceedings founded in state law.

Consider the language of the act. It does not mention expressly proceedings in state courts or actions arising out of state law. It does mention proceedings before "the Commission," that is the Interstate Commerce Commission, plainly leaving

outside the act proceedings before state commissions (see Title I of Act "Definitions" 7). The other clause "in actions against carriers," should we think be held to refer similarly only to actions founded on federal law. How could Congress have intended to leave state commission proceedings out of the act and to include within the act actions based on state laws? There is no reason for including or excluding one of these kinds of proceedings that does not apply similarly to the other.

(b) Finally we say that the clause quoted from the Transportation Act cannot be construed to apply to causes already barred by limitation. The legislative power to extend limitations we concede includes cases where limitation has already run; *Campbell v. Holt*, 115 U. S. 620 (although, as to this courts have differed). But as a matter of interpretation every presumption is against applying statutes as to revive causes barred before their passage.

The Supreme Court of Minnesota based its opinion on this ground. It quoted from two Minnesota decisions as follows:

> "A particular statute limits the right to commence an action to six years from the time the cause of action accrued. An amendment of that statute extending the time to eight years would not revive a cause of action which became barred a few days prior to the change in the law, though it would operate to extend the time as to all causes of action not barred by the old statute. * * * The general rule

is that the legislature has no power to revive a right of action already barred by limitations by retrospective legislation, or otherwise. But, if the power be conceded, the intention to revive should be made clearly to appear by the terms of the statute, and not left to inference."

Whittier v. Village of Farmington, 115 Minn. 182.

"It is clear that the language of the Transportation Act, though confessedly retroactive in operation, is not such as to justify the conclusion that by it Congress intended to revive rights of action barred and not in fact existing at the time of the passage of the Act. * * * No rule of statutory construction with which we are familiar will justify the conclusion of an intent to restore the dead and down right to life and vitality."

Kannellos v. Great Northern Ry. Co., 151 Minn. 157.

The same rule was held in *Sohn v. Waterson,* 17 Wall. 596, 599. See also *Twenty per cent cases,* 20 Wall. 179, 187.

The court below also quoted with approval from a recent decision of the New York Court of Appeals in *Hopkins v. Lincoln Trust Co.,* 233 N. Y. 213. There an action of fraud had been barred by the lapse of six years when the legislature passed a new limitation giving the plaintiffs in such cases six years from discovery of the fraud. The plaintiff sued alleging that six years had not elapsed since discovery. But the court held that the right of the legislature to revive a cause of action once

barred by limitation is a doubtful right, sustained in some jurisdictions but denied in others, and at any rate an extreme and unusual exercise of legislative power which will not be deduced from words of doubtful meaning. The court said: "Uncertainties are resolved against consequences so drastic."

And here again it is important that any interpretation be avoided which would render the act invalid. 206 (f) speaks of "actions against carriers" (that is proceedings in court) and "claims for reparation to the Commission." Actions against carriers, so far as they depend on or arise out of federal law, consist largely of actions based on the Federal Employers' Liability Act. But this act has been held (*Kannellos v. Great Northern Ry. Co.*, 151 Minn. 157, *Jones v. Delaware, Lackawanna & Western Railroad Co.*, 96 N. J. L. 197) to create a cause of action conditioned on its being enforced within a limited time. The two years limited for suit is not a statute of limitation but a condition of liability. Clause (f) therefore cannot include actions against carriers already barred growing out of the Employers' Liability Act. On the same ground actions growing out of the Minnesota Employers' Liability Act, chapter 187 general laws 1915, are excluded. And actions for death growing out of statutes are of the same character. As to "claims for reparation to the Commission" this court has settled that these also are cases where the lapse of time not only bars the remedy but destroys the liability. *Phillips v. Grand Trunk*

Ry., 236 U. S. 662, 667; *United States v. Interstate Commerce Commission*, 246 U. S. 638, 642; *Kansas City Southern Ry. Co. v. Wolf*, 261 U. S. 133. Subdivision (f) therefore cannot include "claims for reparation to the Commission" already barred. A similar rule has been held as to claims for reparation to a state commission. *Northern Pacific Ry. Co. v. Department of Public Works*, 207 Pac. 686; later opinion same case, 122 Wash. 673.

It thus appears that if subdivision (f) be given the retroactive effect contended for it must be held invalid as applied to the large majority of cases; invalid as to actions for death under state statutes, actions growing out of the Federal Employers' Liability Act or state acts of a similar character, and as to all "claims for reparation to the Commission" or similar claims to state commissions. But this would destroy subdivision (f) entirely on the authority of *Poindexter v. Greenhow*, 114 U. S. 270, 304; *Illinois Central Railroad Co. v. McKendree*, 203 U. S. 514; *Employers' Liability Cases*, 207 U. S. 463, and *Butts v. Merchants & Miners Transportation Co.*, 230 U. S. 126. Where the whole operation of a statute is dependent on the same general words and it is impossible to separate the valid from the invalid and to find any intention on the part of Congress to make the valid part effectual standing alone the whole act is held invalid.

The only refuge from this conclusion is in the proposition held by the Supreme Court of Minnesota, that the language of (f) cannot be interpreted to apply to causes of action completely barred when the Transportation Act was passed.

It ought to be self-evident that where a statute creates a liability conditioned on action being brought within a limited time it is beyond legislative power after that time has elapsed to revive liability. Such legislative action cannot be justified without successfully maintaining that legislative power may create liabilities *ex post facto*.

There is nothing in *Campbell v. Holt* that supports such a contention. Indeed the argument of the court is inconsistent with it. The court said p. 623 that where the bar of a statute creates a right, and not merely cuts off a remedy, it may very well be that removal of the bar by legislative act takes property without due process of law. The case was decided on the ground that ordinary statutes of limitation applicable to actions of assumpsit simply bar the remedy and neither bar the debt or create any new right in the debtor.

Actions for death created by statute, actions growing out of the Federal Employers' Liability Act, actions growing out of State Employers' Liability Acts, and proceedings for reparation before the Interstate Commerce Commission, are all actions created by statute and confer rights conditioned upon enforcement within a limited time. The time limited in none of these statutes is an ordinary limitation. When the time limited in these acts has run it is as if the liability had never existed. It seems to us self-evident that the legislative power can no more create liability in such cases after it is barred, than it can found liability generally on

any past transaction it chooses. *Rodman v. Missouri Pacific Ry. Co.*, 65 Kan. 645; *Bretthauer v. Jacobson*, 79 N. J. L. 223; *Gulf etc. Ry. v. Bradley*, 110 Miss. 152; *Pittsburgh etc. Ry. v. Hine*, 25 Ohio St. 629.

A word in conclusion about the jurisdiction. A writ of error was sued out and after the case was docketed certiorari was issued. We suggest that the court has jurisdiction of the writ of error.

The statute authorizes writ of error "where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity."

It is submitted that this case is described by this language. It is not required that suit should be founded on the Constitution or laws of the United States, or founded on the state statute claimed to be obnoxious to them. It is required only that in the state court, in any way, or at any stage, "where is drawn in question the validity of a statute of," any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

In this case in the state court there was drawn in question first the validity of a provision of the Transportation Act (assuming one interpretation of it). In the second place there was drawn in question in the state court the validity of a statute

of limitation of the state, which was asserted to have no validity as applied to this case because of the Transportation Act which was said to nullify the state statute as applied to the case. The state court sustained the validity of the state statute of limitation against the contention that the act of Congress overruled it and so applied.

It is submitted that the jurisdiction is clearer than in *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282.

We think the certiorari should be dismissed, but inasmuch as it involves the same record and same questions as the writ of error, we ask the court to consider the certiorari upon this brief.

CHARLES W. BUNN.